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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,787	01/02/2002	Jason C. Killo	6232-231 (158420)	9223

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EXAMINER


JOHNSON, BLAIR M

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/039,787	Applicant(s) KILLO ET AL.	
	Examiner Blair M. Johnson	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

Claims 4,5,11,13,14-17,22-29 and 45-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims use the terms "about" and "approximately" to limit the hardness factor of the belt and wheels. However, the specification does not use these modifying terms. Consequently, these claims are not consistent with the specification as to the actual hardness of these elements. It is further noted that recitations such as "less than approximately" is vague and indefinite.

In claims 45 and 46, there is no antecedent basis for "the reduced portion of the body".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26 and 28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Grossman et al.

See Figs. 5 and 6 and body 17, connecting portion 26 and drapery attachment means 18.

Claim 26 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Coburn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kembuegler et al in view of Huang and further in view of Rosenbaum.

Kembuegler et al discloses a motor M driven pulley 13 which has teeth and drives a toothed belt 15. It is stated that track 11 is conventional and supports master carriage 22 having rollers for rolling along the track. While it is clearly obvious that Kembuegler et al meets the "housing" limitation as well as provides auxiliary cars, Huang is cited to show such as old and well known. It would have been obvious to provide Kembuegler et al with such a track so as to direct the movements of the carriages and belt and to provide auxiliary cars to support the curtain. Regarding the resilient rollers, Rosenbaum discloses a resilient roller 24. It would have been obvious to modify the rollers of Kembuegler et al and Huang to be made of such a material so as to reduce noise and to dampen movement of the carriers.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kembuegler et al in view of Huang and further in view of Whitley.

Kembuegler et al discloses a motor M driven pulley 13 which has teeth and drives a toothed belt 15. It is stated that track 11 is conventional and supports master carriage 22 having rollers for rolling along the track. While it is clearly obvious that Kembuegler et al meets the "housing" limitation as well as provides auxiliary cars, Huang is cited to show such as old and well known. It would have been obvious to provide Kembuegler et al with such a track so as to direct the movements of the carriages and belt and to provide auxiliary cars to support the curtain. Regarding the resilient rollers, the use of separate soft tires is taught by Whitley in Figs. 6 and 7, with the tires in Fig. 7 entirely covering the sides of the wheel. In view of this teaching, it would have been obvious to modify the wheels of to have such dampening means, which have the specific hardness recited. Whitely discloses a Shore A hardness of 70-90 which is chosen to render "quiet...operation", Abstract. It would have been obvious to modify the tires of Kembuegler et al and Huang to have a hardness which also provides such quiet operation while being suitable for it's specific application, i.e. draperies. Regarding the curved crosssection, it is noted that a crosssection of a wheel such as in Kembuegler et al and Huang have a curved crosssection parallel to the plane of the wheel.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kembuegler et al in view of Huang and either Rosembaum or Whitley, as applied above, and further in view of Breher et al.

The attenuation of noise caused by belts by using a soft polyurethane is taught by Breher et al. He further states that the belt material has a Shore A hardness in the

range of 85-90 and a tip of the teeth have a hardness of Shore A 75-80, column 4, lines 26-45. In view of this teaching, one looking for ways to lessen noise by using a softer belt material would have looked to Breher et al and applied his teaching to Kembuegler et al.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kembuegler et al in view of Fukada and further in view of Whitley and Breher et al.

Kembuegler et al is described above. Kembuegler et al does not disclose the track having curved surfaces for the rollers. However, such are well known in the art, as illustrated by Fukada, who shows rollers mounted in curved tracks. In view of this teaching, it would have been obvious to modify Kembuegler et al whereby the rollers and the track portion engaged thereby are curved so as to positively guide the cars. The belt 6 is elastic, as pointed out in column 3, line 47. The attenuation of noise caused by belts by using a soft polyurethane is taught by Breher et al. He further states that the belt material has a Shore A hardness in the range of 85-90 and a tip of the teeth have a hardness of Shore A 75-80, column 4, lines 26-45. In view of this teaching, one looking for ways to lessen noise by using a softer belt material would have looked to Breher et al and applied his teaching to Bratschi et al.

Regarding the wheels, the use of separate soft tires is taught by Whitley in Figs. 6 and 7, with the tires in Fig. 7 entirely covering the sides of the wheel. In view of this teaching, it would have been obvious to modify the wheels of Fukada to have such dampening means, which have the specific hardness recited. The specific material of the tires and the belt is clearly an obvious design choice. Whitely discloses a Shore A

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hardness of 70-90 which is chosen to render "quiet...operation", Abstract. It would have been obvious to modify the tires of Fukada to have a hardness which also provides such quiet operation while being suitable for it's specific application, i.e. draperies.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kembuegler et al in view of Fucada, Rosenbaum and Breher et al.

These references are combined as discussed above.

Claims 18,22-24 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kembuegler et al in view of Breher et al.

Kembuegler et al discloses a motor M driven pulley 13 which has teeth and drives a toothed belt 15. While the hardness of belt 15 is not known, Breher et al is applied here as above. Regarding the specific gearing of the motor, it is well known to use worm gears in a simple transmission such as in Kembuegler et al so as to accommodate size limitations and to provide reducing means. It would have been well within the purview of one of ordinary skill in the art to utilize this well known expedient in the motor of Kembuegler et al.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kembuegler et al in view of Fukada and further in view of Whitley.

These references are applied as above. Regarding the noise level, since the structure of the claim which results in this noise level is met by the references, the applied references are capable of achieving such noise levels.

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kembuegler et al in view of Breher et al as applied above and further in view of Whitley.

Whitley is applied here as above.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kembuegler et al in view of Breher et al as applied above and further in view of Heyer.

It is widely known to provide drive belts with wire reinforcements, as illustrated by Heyer. It would have been obvious to modify Kembuegler et al whereby his belt has such reinforcements so as to strengthen the belt.

Claims 34,35,38,39 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bratschi in view of Fukada and further in view of Breher et al.

Bratschi discloses a motor driven drapery system which uses a belt 6, master carriers 33,etc., and auxiliary carriers 39. As seen in Fig. 12, the belt 6 has a separate compartment from that which accommodates the carriers. Bratschi does not disclose rollers. However, such are well known in the art, as illustrated by Fukada, who shows rollers mounted in curved tracks. In view of this teaching, it would have been obvious to modify Bratschi whereby the slides are replaced with rollers, which in the case of the master carrier would constitute two pairs of rollers, one for each of the spaced slides 30. The belt 6 is elastic, as pointed out in column 3, line 47. The attenuation of noise caused by belts by using a soft polyurethane is taught by Breher et al. He further states that the belt material has a Shore A hardness in the range of 85-90 and a tip of the teeth have a hardness of Shore A 75-80, column 4, lines 26-45. In view of this teaching, one looking for ways to lessen noise by using a softer belt material would have looked to Breher et al and applied his teaching to Bratschi et al.

Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bratschi in view of Fukada and Breher et al as applied above and further in view of Whitley.

Whitley is applied here as above. Regarding the specific material of claim 36, such is a known material. Since it has the same hardness as that of Whitley, it would have been obvious to use such a known material as the "thermoplastic elastomer" disclosed by Whitley.

Claims 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bratschi in view of Fukada and Breher et al as applied above and further in view of Burns.

Providing a coating of a surface of a curtain track to promote less friction and hence less noise is well known as illustrated by Burns at 20, Fig. 2. In view of this teaching, it would have been obvious to modify the track of Bratschi to have such a coating. Again, the specific material used for the coating, is clearly an obvious design choice.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bratschi in view of Fukada and further in view of Weber.

Providing an auxiliary car with two legs shaped as claimed is well known as illustrated by Weber at 16 and serves to provide a strong support while permitting a more narrow slot. The top portion of the car 16 is a horizontal section wherein the legs define a reduced crosssection in relation thereto. It would have been obvious to modify the cars of Bratschi to have such a structure.

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grossman et al.

The specific dimensions of Grossman et al are not known. However, it appears that the limitations of these two claims will be met by the structure as shown in the Grossman et al drawings. It would have been obvious to so provide for such movement potential so as to prevent binding of the car.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 3-5 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/165147. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 2 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of

copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 7 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 8 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 7 of copending Application No. 10/165148 in view of Bratschi. Bratschi is applied here as above.

This is a provisional obviousness-type double patenting rejection.

Claim 9 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 8 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claims 10 and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 9 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claims 12-14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 15 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 16 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of copending Application No. 10/165148 in view of Whitley. Whitley is applied as above.

Claims 12-14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 17 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12 and 13 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claims 18-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 21 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14 and 15 of

copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 22 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 27 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 25 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 16 of copending Application No. 10/165148 in view of Bratschi and Whitley. Bratschi and Whitley are applied as above.

Claim 26 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 16 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 30 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claims 31-33 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of copending Application No. 10/165148 in view of Breher et al. Breher et al is applied as above.

Claim 34 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 35 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17 and 18 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claims 36 and 37 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17 and 19 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claims 38 and 39 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 of copending Application No. 10/165148 in view of Breher et al. Breher et al is applied as above.

Claim 40 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17 and 22 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 41 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17,22 and 23 of

copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 42 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17 and 22-24 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 43 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17 and 25 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 44 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17,25 and 26 of copending Application No. 10/165148. Although the conflicting claims are not identical, they are not patentably distinct from each other because their differences are obvious.

Claim 49 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 29 of copending Application No. 10/165148 in view of Whitley. Whitley is applied as above.

Allowable Subject Matter

The following applies in the event the double patenting rejections are overcome, either by amendment or by the filing of a terminal disclaimer:

Claims 1-5 and 7-11 would be allowed.

Claims 43 and 44 would be objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 46-48 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive. However, the previous indication of allowable subject matter regarding the material of the belt is withdrawn in light of the newly applied Breher et al reference. The Examiner regrets his handling of this application in that this action constitutes a third nonfinal rejection and apologizes for the resulting burden he has placed on the Applicant.

Remarks addressing the material of the belt will not be addressed since they are moot in light of the new grounds of rejection of this feature. Likewise most of the other remarks since Kembuegler et al is now the primary reference in most of the rejections.

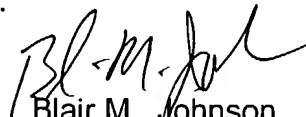
The combination of Fukada and Whitley with Bratschi is clearly discussed at length in the rejection above. Fukada teaches rollers instead of sliding shoes as in Bratschi and Whitley addresses Applicant's concerns regarding noise in the same manner as Applicant, thereby establishing that Whitley is particularly pertinent to Applicant's invention.

Again, this action is not made final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blair M. Johnson whose telephone number is (703) 308-0526. The examiner can normally be reached on Mon.-Fri., 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Blair M. Johnson
Primary Examiner
Art Unit 3634

BMJ
8/3/04